1999

The State of Utah v. Charles K. Leatherbury : Reply Brief

Utah Court of Appeals

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Kris C. Leonard; Assistant Attorney General; Jan Graham; Utah Attorney General; Brendan P. McCullagh; Deputy Salt Lake District Attorney; Attorneys for Appellant.

IN THE UTAH COURT OF APPEALS

STATE OF UTAH,	:	
Plaintiff/Appellant,	:	Case No. 990873-CA
v.	:	
CHARLES K. LEATHERBURY,	:	Priority No. 2
Defendant/Appellee.	:	

REPLY BRIEF OF APPELLANT

APPEAL FROM AN ORDER DISMISSING CHARGES OF FAILURE TO STOP ON AN OFFICER'S SIGNAL, A THIRD DEGREE FELONY, IN VIOLATION OF UTAH CODE ANN. § 41-6-13.5 (1998); RECKLESS DRIVING, A CLASS B MISDEMEANOR, IN VIOLATION OF UTAH CODE ANN. § 41-6-45 (1998); LICENSE PLATE VIOLATION, A CLASS C MISDEMEANOR, IN VIOLATION OF UTAH CODE ANN. § 41-1A-1305(4) (1998); DRIVING ON A SUSPENDED LICENSE, A CLASS C MISDEMEANOR, IN VIOLATION OF UTAH CODE ANN. § 53-3-227 (1998); AND GIVING FALSE INFORMATION, A CLASS C MISDEMEANOR, IN VIOLATION OF UTAH CODE ANN. § 76-8-507 (1999), IN THE THIRD JUDICIAL DISTRICT COURT IN AND FOR SALT LAKE COUNTY, STATE OF UTAH, THE HONORABLE MATTHEW B. DURRANT, PRESIDING

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IN THE UTAH COURT OF APPEALS

STATE OF UTAH,	:	
Plaintiff/Appellant,	:	Case No. 990873-CA
v.	:	
CHARLES K. LEATHERBURY,	:	Priority No. 2
Defendant/Appellee.	:	

REPLY BRIEF OF APPELLANT

In addition to the facts and arguments contained in the State/Appellant's opening brief, the State submits the following argument in reply to the first point contained in defendant/appellee's responsive brief.

ARGUMENT

NEITHER THE SIGNED MINUTE ENTRY NOR THE SUBSEQUENTLY-FILED FINDINGS CONSTITUTED A FINAL APPEALABLE ORDER TRIGGERING THE TIME FOR FILING AN APPEAL; THIS COURT'S JURISDICTION FLOWS FROM THE TIMELY FILING OF A NOTICE OF APPEAL THREE DAYS AFTER ENTRY OF A WRITTEN FINAL ORDER DISMISSING THE CASE

For purposes of this argument, the following dates are pertinent:

June 21, 1999	Signed minute order is entered dismissing the case and ordering defense counsel to preparing findings of fact and conclusions of law (R. 104) (in Add. A).
July 26, 1999	Findings and conclusions are signed by the judge (no entry date appears on the document) (R. 106-10) (in Add. B).

Sept. 20, 1999	Signed written order of dismissal is entered (R. 111-12) (in Add. C).
Sept. 23, 1999	Notice of Appeal is filed (R. 113-14).

Defendant argues that this Court lacks jurisdiction over this appeal because the notice of appeal was not timely filed after the signed minute entry was filed. He claims that the signed minute entry was a final appealable order that fully adjudicated the parties' rights and that the trial court did not contemplate the filing of an additional order. Br. of Aplt. at 11-17. Alternatively, he argues that once the written findings called for by the minute entry were filed, the parties' rights were fully adjudicated and the time for filing an appeal began to run. Id. at 17-18. The State's failure to file its notice of appeal until fifty-one days later, he claims, prevented this Court from acquiring jurisdiction to hear the appeal. Id. Defendant's arguments, however, do not withstand scrutiny.

A. The Signed Minute Entry was not a Final Appealable Order Because it Clearly Intended that Further Action be Taken and it was Devoid of Necessary Findings

In appropriate circumstances, "a signed minute entry *may be* a final order for purposes of appeal." Swenson Associates Architects v. State, 889 P.2d 415, 417 (Utah 1994) (emphasis in original). This is so, however, "only where 'the ruling specifies with certainty a final determination of the rights of the parties and is susceptible of enforcement.'" Id. (quoting Cannon v. Keller, 692 P.2d 740, 741 n.1 (Utah 1984)). "It must be clear that that 'which is offered as the record of a judgment is really such and not an order for a judgment or a mere memorandum from which the judgment was to be drawn.'" Swenson, 889 P.2d at

417 (quoting Hartford Accident & Indem. Co. v. Clegg, 103 Utah 414, 420, 135 P.2d 919, 922 (1943)) (additional quotations omitted).

The Utah Supreme Court has found that a signed minute entry which announces the ultimate decision of the court and then provides that one party is to prepare a written order reflecting that decision–which order is ultimately signed and entered–is not a final appealable order. Swenson, 889 P.2d at 417. Cf. Sheta v. Grahm, 156 Cal.App.2d 77, 80, 318 P.2d 756, 758 (1957) (citation omitted) (where findings of fact or a further or formal order is required, an appeal should not lie from a minute entry). Further, the Court has found that a signed minute entry providing "that judgment be entered against the plaintiff and in favor of the defendant" was not a final order because, among other things, it was obvious from the language that "something more was contemplated by the court." Hartford, 135 P.2d at 922.

The language of the signed minute entry in this case unmistakably demonstrates that the court did not intend the minute entry to be a final judgment, but contemplated further action. The minute entry reads:

> Defendant's motion to dismiss heard, [argument] by [defense counsel].
> Argument by [the prosecutor].
> Court finds in favor of the defendant and orders the case dismissed.
> [Attorney for defendant] to prepare findings of fact and conclusions of law.

(R. 104-05) (audio tape markings omitted).

The brief, almost cryptic, language of the minute entry amounts to no more than an "order for a judgment" and, therefore, does not amount to a final order. Swenson, 889 P.2d at 417. The minute entry makes no attempt to explain the dismissal. Instead, it merely

announces the ultimate decision of the court and directs the filing of findings and conclusions to explain the reasons for the dismissal and the logic of the court, as was the case in Swenson. The language unequivocally demonstrates that the trial court anticipated the preparation and filing of additional documentation necessary to complete the case. This is reinforced by the fact that the trial court later signed and entered both the findings and the subsequent written order–acts which would have no meaning if the court intended that its minute entry was the final appealable order. Accordingly, the signed minute entry in this case was not intended to be a final appealable order. Cf. Brice v. Department of Alcoholic Bev. Control, 153 Cal.App.2d 315, 314 P.2d 807 (Cal. App. 1 Dist. 1957) (even if findings were not legally required, minute entry noting that findings were to be prepared clearly demonstrated that the court contemplated further action, preventing the minute entry from being an appealable order).

In addition, findings of fact and conclusions of law, "when appropriate," are required before an order may be deemed "final." Ahlstrom v. Anderson, 728 P.2d 979, 979 (Utah 1986) (per curiam). Rule 25, Utah Rules of Criminal Procedure, makes the findings "appropriate" in this case. Rule 25 governs dismissal of criminal matters without trial and provides that "[t]he reasons for any such dismissal shall be set forth in an order and entered in the minutes." Utah R. Crim. P. 25(c). The minute entry in this case is devoid of any suggestion as to why the trial court dismissed the case. Instead, the minute entry expressly provides for the later filing of findings and conclusions. Consequently, the findings are

"appropriate" and, hence, required because they provide the requisite reasons for the dismissal in this case.

Not only are the detailed findings necessary to meet the requirements of rule 25(c), but they are also necessary for full appellate review of the trial court's dismissal. Without them, this Court cannot know the basis of the dismissal and whether it was justified. See Salt Lake City v. Hanson, 19 Utah 2d 32, 425 P.2d 773 (1967). Neither can the losing party properly frame its challenge to the trial court's ruling on appeal.

Further, although the dismissal announced in the minute entry reflected the ultimate determination of the case, it did not fully adjudicate the facts underlying the decision where it provided no such facts. Factual findings which provide the basis for dismissal of the case reflect the rights of the parties in relationship to the dismissal order. The parties have a right to challenge the proposed findings before they become final, and the trial court can alter or amend the findings and/or its judgment as it becomes necessary. Utah R. Crim. P. 52(b); Utah R. App. P. 4(b); Reeves v. Steinfeldt, 915 P.2d 1073, 1076 (Utah App. 1996). The trial court recognized the importance of the findings by ordering that they be prepared and filed. Accordingly, the signed minute entry did not represent a final determination of the parties' rights when it merely provided for dismissal of the case.

B. Entry of the Findings of Fact did not Trigger the Time for Filing a Notice of Appeal Because the Findings did not Include a Final Order of Dismissal

Defendant claims that if the filing of findings and conclusions is deemed necessary before an appeal may be perfected, then the time for filing the appeal began to run from the

date of entry of those findings. Br. of Aplt. at 17-18. However, defendant's argument that the written dismissal order is superfluous ignores the requirements of rule 25(c), Utah Rules of Criminal Procedure.

Rule 25(c) requires that the reasons for the dismissal "be set forth in an order and entered in the minutes." Utah R. Crim. P. 25(c). To this end, findings and conclusions and a summary order of dismissal are usually combined in a single document in criminal cases. In this case, for whatever reason, defense counsel chose not to submit an order with the findings, which would have triggered the running of the time for filing an appeal. Neither do the findings incorporate the earlier minute entry announcing the dismissal. Consequently, the mere filing of the findings does not comply with rule 25(c).

To comply with rule 25(c) and trigger the time to file an appeal, the prosecutor prepared a summary written order, incorporating the findings and ordering the dismissal. Defense counsel approved the order as to form, the court executed it, and it was entered in the record. This complies with all the requirements of rule 25(c). It also demonstrates that neither the court nor the parties regarded the findings as the "final judgment" for purposes of triggering the time for filing an appeal. See Swenson, 889 P.2d at 417.

That the order was entered nearly two months after preparation of the findings may well have been due to the prosecutor's desire to provide defense counsel ample opportunity to complete the documentation necessary to effect the dismissal, inasmuch as the trial court had ordered defense counsel to do so. While the prosecutor could have filed a notice of

appeal at any time before or after entry of the findings and conclusions, the time for filing an appeal would not have commenced until entry of the written order incorporating the reasons for the dismissal pursuant to rule 25(c). See Utah R. App. P. 4(c). Hence, his failure to file an earlier notice is not fatal to this Court's jurisdiction over this appeal.

Because neither the signed minute entry nor the subsequently-filed findings of fact constitute a final appealable order, neither document triggered the time for filing an appeal. Instead, that time commenced with entry of the final written order on September 20, 1999, and the notice of appeal, filed three days later, was timely and gave this Court jurisdiction over this appeal.

CONCLUSION

For the foregoing reasons, the State respectfully requests that this Court reverse the trial court's dismissal of the case and remand the matter for trial.

RESPECTFULLY SUBMITTED this 24th day of August, 2000.

JAN GRAHAM
Attorney General

KRIS C. LEONARD
Assistant Attorney General

MAILING CERTIFICATE

I hereby certify that a true and accurate copy of the foregoing Reply Brief of Appellant was hand-delivered to Joan C. Watt, Salt Lake Legal Defender Assoc., attorney for defendant/appellee, 424 East 500 South, #300, Salt Lake City, Utah 84111, this 24th day of August, 2000.

K Leonard

K Leonard

ADDENDA

Addendum A

THIRD DISTRICT COURT - SANDY COURT
SALT LAKE COUNTY, STATE OF UTAH

STATE OF UTAH, Plaintiff,	:	MINUTES INCOURT NOTE
vs.	:	Case No: 991400315 FS
CHARLES K LEATHERBURY, Defendant.	:	Judge: MATTHEW B. DURRANT Date: June 21, 1999

PRESENT
Clerk: christeh
Prosecutor: MCCULLAGH, BRENDAN P
Defendant
Defendant's Attorney(s): TORRENCE, DANIEL

DEFENDANT INFORMATION
Date of birth: July 8, 1970
Audio
Tape Number: 99160 Tape Count: 922

CHARGES

1. FAIL TO STOP/RESPOND AT COMMAND OF POLIC - 3rd Degree Felony

3. RECKLESS DRIVING - Class B Misdemeanor

4. IMPROPER PLATE ON COMMON CARRIER - Class C Misdemeanor

5. DRIVE ON DENIED LICENSE - Class C Misdemeanor

6. FALSE PERSONAL INFORMATION TO P/O - Class C Misdemeanor

HEARING

TAPE: 99160 COUNT: 945
DEFENDANT'S MOTION TO DISMISS HEARD, BY DANIEL TORRENCE.
COUNT: 1746
ARGUMENT BY MR. MCCULLAGH.
COUNT: 3377
COURT FINDS IN FAVOR OF THE DEFENDANT AND ORDERS THE CASE

Case No: 991400315
Date: Jun 21, 1999

DISMISSED.

ATD TO PREPARE FINDINGS OF FACT AND CONCLUSIONS OF LAW.

Dated this 21 day of June, 1999.

MATTHEW B. [illegible]
District Court Judge

By _____
STAMP USED AT DIRECTION OF JUDGE

STATE OF UTAH
THIRD DISTRICT COURT
SANDY

Addendum B

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IN THE THIRD JUDICIAL DISTRICT COURT, STATE OF UTAH

SANDY DEPARTMENT

STATE OF UTAH, Plaintiff, v. CHARLES K. LEATHERBURY, Defendant.	: : : : : : : : :	FINDINGS OF FACT AND CONCLUSIONS OF LAW 991400315 FS Case No. ~~991906485~~ JUDGE MATTHEW B. DURRANT

The Defendant, CHARLES K. LEATHERBURY, by and through counsel, DANIEL M. TORRENCE, filed a Motion to Dismiss on or about June 10, 1999. The grounds for the motion were that more than 120 days had passed since Defendant's 120-day Request for Disposition was received by the prison warden and the state had not brought the case to trial. The State opposed the motion. The Court requested and received memoranda from both parties. After a hearing on June 21, 1999, the Court granted Defendant's motion.

The Court makes the following findings of fact and conclusions of law.

FINDINGS OF FACT

1. On January 14, 1999, Charles K. Leatherbury was arrested and booked into jail. The charges included Fleeing a Peace Officer and several other charges.

2. Because Mr. Leatherbury was on parole from Utah State Prison at the time, he was returned to prison.

3. Utah State Troopers investigated the alleged crimes and prepared a No-Warrant Arrest Fact Sheet, Incident Report, Supplementary Fact Sheet, Vehicle Inventory Form, Traffic Accident Form, Vehicle Seizure Form, Evidence Log, Vehicle Pursuit Memorandum, and Pursuit Data Collection Form. The District Attorney also obtained Mr. Leatherbury's vehicle and registration information, FBI Criminal History Record, and Utah Criminal History Record.

4. Using this information, the District Attorney prepared a detailed, four page Information containing six counts, including Failure to Respond to Officer's Signal to Stop, Possession of Drug Paraphernalia, Reckless Driving, License Plate/Registration Violation, Driving on Suspended/Denied License, and False Identity to a Peace Officer.

5. On February 2, 1999, the Information was signed by the Deputy District Attorney and authorized for presentment and filing.

6. On February 8, 1999, Sgt. Mary Brockbrader, the Authorized Agent in the DIO Record Unit at the Utah State Prison, received a copy of Mr. Leatherbury's Notice and Request for Disposition of Pending Charges.

7. Within a few days, Sgt. Brockbrader mailed the Notice and Request for Disposition to the Salt Lake County District Attorney.

8. The Information was filed with the Clerk of the District Court on March 26, 1999.

9. Mr. Leatherbury made his initial appearance in court on April 7, 1999; he attended a roll call hearing on April 22, 1999; his preliminary hearing was held May 20, 1999.

10. At the preliminary hearing, Mr. Leatherbury was bound over for trial on Counts I, III, IV, V, and VI. Count II was dismissed. Trial was scheduled for June 22, 1999.

11. One hundred and twenty days after February 8, 1999 (the date Sgt. Brockbrader received the Request for Disposition) was June 8, 1999. By that date, the State had not brought Mr. Leatherbury to trial.

12. Mr. Leatherbury asked for no continuances and did nothing to cause any delay in bringing the case to trial. The State sought no continuances of the trial date.

13. On June 10, 1999, Mr. Leatherbury's attorney filed a Motion to Dismiss for Failure to Bring to Trial within 120 days.

14. Judge Matthew B. Durrant granted Mr. Leatherbury's motion on June 21, 1999 following oral argument and the receipt of memoranda from both parties.

CONCLUSIONS OF LAW

The relevant statute is the Prisoner's Demand for Disposition of Pending Charge statute, U.C.A. 77-29-1, (the "disposition statute" or "detainer statute"), which provides:

> (1) Whenever a prisoner is serving a term of imprisonment in the state prison, jail or other penal or correctional institution of this state, and there is pending against the prisoner in this state any untried indictment or information, and the prisoner shall deliver to the warden, sheriff or custodial officer in authority, or any appropriate agent of the same, a written demand specifying the nature of the charge and the court wherein it is pending and requesting disposition of the pending charge, he shall be entitled to have the charge brought to trial within 120 days of the date of delivery of written notice.
>
> (2) Any warden, sheriff or custodial officer, upon receipt of the demand described in subsection (1), shall immediately cause the demand to be forwarded by personal delivery or certified mail, return receipt requested, to the appropriate prosecuting attorney and court clerk. The warden, sheriff or custodial officer shall, upon request of the prosecuting attorney so notified, provide the attorney with such information concerning the term of commitment of the demanding prisoner as shall be requested.

(3) After written demand is delivered as required in subsection (1), the prosecuting attorney or the defendant or his counsel, for good cause shown in open court, with the prisoner or his counsel being present, may be granted any reasonable continuance.

(4) In the event the charge is not brought to trial within 120 days, or within such continuance as has been granted, and defendant or his counsel moves to dismiss the action, the court shall review the proceeding. If the court finds that the failure of the prosecuting attorney to have the matter heard within the time required is not supported by good cause, whether a previous motion for continuance was made or not, the court shall order the matter dismissed with prejudice.

U.C.A. 77-29-1.

1. Mr. Leatherbury was serving a term of incarceration at Utah State Prison at all relevant times.

2. Mr. Leatherbury complied with the disposition statute by delivering to the warden's agent a written demand entitled NOTICE AND REQUEST FOR DISPOSITION OF PENDING CHARGES requesting disposition of pending charges.

3. Thereafter, the burden of bringing the case to trial rested solely on the prosecutor; neither the defendant nor his counsel had any duty to inform the court or the prosecutor of the Request for Disposition.

4. The language of the disposition statute requires that, in order to begin the 120-day disposition period, the "untried" Information be "pending." It does not require the Information to have been "filed."

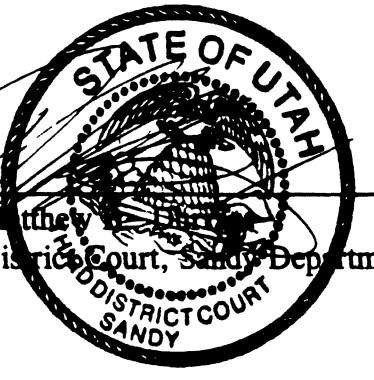
5. Mr. Leatherbury's 120 day disposition period thus began to run on February 8, 1999, the day the warden's agent received the Request for Disposition, even though the Information was not filed until some six weeks later.

6. Once the Information was signed by a Deputy District Attorney for presentment and

filing, the District Attorney had sufficiently investigated its case and had actual notice of all the charges it intended to bring against Mr. Leatherbury; thus, the Information was "pending" for purposes of the disposition statute.

7. Because the State had not brought Mr. Leatherbury to trial by June 8, 1999, 120 days after the warden's agent received the Request for Disposition, and because Mr. Leatherbury did nothing to delay the setting of his case for trial, and because the State failed to show "good cause" for its delay, Mr. Leatherbury was entitled to have the charges against him dismissed with prejudice.

DATED this 26th day of July 1999.



Judge Matthew [illegible]
Third District Court, Sandy Department

Presented this 26 day of July 1999.

DANIEL M. TORRENCE (#7652)
Attorney for Defendant

Approved as to form; notice of presentation waived:

Brendan McCullagh
Deputy District Attorney # 7251

MAILED/DELIVERED a copy of the foregoing to the District Attorney's Office, 2001 South State Street, Salt Lake City, Utah 84190-1200 this ___ day of _____, 1999.

Addendum C

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IN THE THIRD DISTRICT COURT, SANDY DEPARTMENT

IN AND FOR SALT LAKE COUNTY, STATE OF UTAH

THE STATE OF UTAH, Plaintiff, -vs- CHARLES K. LEATHERBURY, Defendant.	ORDER OF DISMISSAL Case No. 991400315FS Hon. Matthew B. Durrant

The Court, for the reasons given in The Findings of Fact and Conclusions law already entered, hereby enters this Order dismissing the above captioned case.

DATED this 17th day of September, 1999.

BY THE COURT:

9-20-99

MATTHEW B. DURRANT, District Judge

Approved as to form:

Daniel M. Torrence

CERTIFICATE OF DELIVERY

I hereby certify that a true and correct copy of the foregoing Order Of Dismissal was delivered to Daniel M. Torrence, Attorney for Defendant Charles K. Leatherbury, at 424 East 500 South, Suite 300, Salt Lake City, Utah 84111 on the ____ day of September, 1999.

_____